

STATUS OF CLAIMS

Claims 1 – 19 are cancelled.

Claims 20-42 are pending

Claims 20-42 stand finally rejected.

Claim 20 has been amended herein. No new matter has been added.

REMARKS

Reconsideration and allowance of this application is respectfully requested.

Rejections under 35 U.S.C. § 103(a)

Claims 20-42 stand finally rejected under 35 USC 103(a) as being unpatentable over Herz (USP 5,758,257) in view of Williams (USP 5,945,988) and further in view of Ellis (USP 6,898,762). These rejections are respectfully traversed, as the purported combination of Herz, Williams, and Ellis fails to teach or suggest each of the claimed features recited in independent claims 20, 28 and 32. Furthermore, a prima facie case of obviousness under 35 USC 103 has not been made, as no rational basis has been articulated for the proposed combination of Herz, Williams, and Ellis, absent impermissible hindsight gleaned from Applicant's own disclosure.

20. For purposes of clarity and in order to expedite allowance of the present application, claim 20 has been amended to recite:

A method for displaying a TV program to a viewer,
comprising:

processing information indicative of
preferences of the viewer to develop viewer
characteristics information profile for the viewer;

storing the viewer characteristics information
profile on a viewer storage device;

presenting the viewer with a first list of TV
programs available for viewing, the programs selected
and arranged in accordance with the viewer
characteristics information profile;

receiving feedback input from the viewer after
viewing the first list and in response to the viewer
answering a query, the feedback input requesting
different selections than in the first list; and

presenting the viewer with a second list in
response to said feedback input requesting different
selections than in the first list, said second list
including alternative TV programs available for
viewing, the alternative programs selected in
accordance with an alternative viewer
characteristics information profile, wherein the viewer
characteristics information profile and the alternative
characteristics information profile coexist and the first
list and the second list remain available to the viewer.
(emphasis added).

No combination of the cited art of record teaches or suggests each of the features of present claim 1. In contrast to the claimed invention, the primary reference Herz discloses that customer profiles are updated *based on whether a show that was predicted to be watched by a viewer was not watched* (Herz, col. 26, line 64-col. 27, line 1). In Herz, the updating of the profile is performed by means of *passive monitoring* (Herz, col. 26, lines 57-60). In particular, Herz recites

"Then, at step 306, the passive monitoring feature of the invention is invoked to determine if the customer actually watched the video program selected by the agreement matrix...However, if the customer did not watch the predicted video program, the customer profile for the appropriate time interval is selected...which has characteristics closest to those of the video program actually watched. That customer profile is then adjusted...[and] considered valid until the next time slot is encountered...The agreement matrix is then recalculated...for the new customer profiles and video programs offered in the next time slot."

In view of the above, it is clear that Herz fails to teach "receiving feedback input from the viewer after viewing the first list and in response to the viewer answering a query, the feedback input requesting different selections than in the first list" as required by present claim 20. In contradistinction, Herz teaches updating based on *passive monitoring*, wherein if the profile of the user is modified, a program viewing list in Herz is modified to create a new replacement list. Thus, any "feedback" from a user according to the Herz reference consists of information obtained based on the passive monitoring of a viewer. The viewer does not enter feedback input after the viewer views a first list, as the viewer in

Herz simply watches a show or does not watch a show. Further, as passive monitoring is used in Herz, the viewer is not requesting anything, let alone in response to a query. Accordingly, the step of "receiving feedback input from the viewer..." is neither taught nor suggest by Herz. Moreover, the additional step of "presenting the viewer with a second list *in response to said feedback input requesting different selections*" is neither taught nor suggested by Herz, as no feedback input *requesting different selections* exists in Herz. Accordingly, the assertion on page 3 of the Final Office Action that "the disclosure of Herz, reads on the claimed subject matter, since the agreement matrix is updated, then the customer would be given an updated/adjusted (i.e. different) list of recommended programs" is incorrect, as the primary reference fails to teach the asserted features. Further, the secondary references of Williams and Ellis are not relied upon by the Examiner in these regards. Accordingly, a prima facie case of obviousness under 35 USC 103 has not been met.

2. In addition to the above, further independent reasons exist for withdrawal of the present rejection under 35 USC 103. Present claim 20 recites the additional features:

presenting the viewer with a second list in response to said feedback input requesting different selections than in the first list, said second list including alternative TV programs available for viewing, the alternative programs selected in accordance with an alternative viewer characteristics information profile, wherein the viewer characteristics information profile and the alternative characteristics information profile coexist and the first list and the second list remain available to the viewer".

The Examiner asserts on page 4 of the Final Office Action that Ellis in col. 14, lines 11-36 and col. 20, lines 17-67 teaches an interactive EPG wherein multiple profiles may be active at the same time. The Examiner summarily concludes that it would have been obvious for one of ordinary skill in the art to modify Herz with Ellis "at least in order to allow the user to have more than one active profile." (see page 4, lines 11-13 of Final Office Action dated 3/3/10). In response, Applicant submits that Herz discloses that customer profiles are updated based on whether a show that was predicted to be watched by a viewer was not watched (Herz, col. 26, line 64-col. 27, line 1). The updating of the profile is accomplished by use of passive monitoring (Herz, col. 26, line 57-60). Based on the passive monitoring, if the profile of the user is modified, a program viewing list in Herz is modified to create a new replacement list. Therefore, the "feedback" from a user in Herz must be input based on the passive monitoring by a viewer. Ellis does nothing to cure this deficiency. Moreover, Ellis' interactive EPG and teaching of insertion and implementation of multiple user profiles fails to teach or suggest the limitation that "the first list and the second list remain available to the viewer". Updating or saving of customer profiles is not equivalent to having the first and second lists available to the viewer, as is required by present claim 1. For at least the additional reason that the secondary reference Ellis fails to teach the features relied upon in the Office Action, a prima facie case of obviousness has not been made. Reconsideration and removal of this 35 USC 103 rejection is respectfully requested.

3. While the above represents sufficient reasons for withdrawal of the present 35 USC 103 rejections, additional independent reasons exist for reconsideration and removal of the present rejections of claims 20-42. As admitted on page 4 of the Final Office Action, the primary reference Herz fails to teach the claim feature "wherein the viewer characteristics information profile and the alternative characteristics information profile coexist and the first list and the second list remain available to the viewer". Furthermore, as admitted by the Examiner on page 5 of the Final office Action, the feature that the "feedback input

is based on the viewer answering a query" is also not taught by Herz. However, the Examiner attempts to rely on the references of Ellis and Williams, respectively, to cure these shortcomings of Herz. In response, it is respectfully submitted that the above references, taken singly or in combination (assuming arguendo that such references may be properly combined), fail to teach or suggest the features recited in present claim 20. Furthermore, the combination proposed by the Examiner represents a piecemeal combination and selection of teachings from three disparate references in a veiled attempt to arrive at Applicant's claimed invention. As no nexus exists for the proposed combination as articulated by the Examiner, a prima facie case of obviousness has not been made.

In the first instance, amended claim 20 recites the step of:

receiving feedback input from the viewer after
viewing the first list and in response to the viewer
answering a query, the feedback input requesting
different selections than in the first list;

As discussed above, Herz does not teach even a portion of the aforementioned claim step. The system of Herz is a passive system. No feedback input requesting different selections is provided by Herz, let alone feedback input in response to the viewer answering a query. The secondary reference Ellis is not relied upon in this regard. The secondary reference Williams only discloses that after a viewer is provided with a list of recommended shows based on a preferred genre, the viewer is prompted whether or not to *record* a suggested show. If the viewer *does not view or record* a program, the system will monitor viewing habits and subsequently provide a different list of programs at a later time. No reading of Williams suggests that this reference teaches feedback input received based on answering a query, where the feedback input requests selections different than those in the first list. Accordingly, no combination of Herz and Williams teaches the claim features of

receiving feedback input from the viewer after viewing the first list and in response to the viewer answering a query, wherein the feedback input operates to request selections different than those in the first list.

4. Moreover, the Examiner has failed to articulate a rationale basis, suggestion or motivation, absent impermissible hindsight, for modifying the primary reference of Herz with the purported prompting features of Williams. The Examiner's articulated rationale on page 5 of the Final Office Action states:

This is motivated by the desire to attempt to provide the user with programs that will more likely be selected for view and/or record. If the viewer did not select any programs from the first list, then it is wise to provide the user with a different list of programs, based on the updated viewing habits and preferences of the instant viewer."

In the instant case, the claim feature requires "receiving feedback input from the viewer after viewing the first list and in response to the viewer answering a query, the feedback input requesting different selections than in the first list". The Examiner's articulated rationale that if the viewer did not select any programs from the first list, then it is wise to provide the user with a different list of programs, does not even address the features recited in claim 20. The feedback input of claim 20 is based on a user answering a query and an alternative list of programs is presented based on the answered query. In Williams, only if the query is not answered is there eventually presented an alternative list of programs. Accordingly, the Examiner has failed to satisfy his burden under 35 USC 103.

5. Still further, the proposed modification of the passive monitoring system of the primary reference Herz with a prompting or query-based system of

Williams would change the principle of operation of the primary reference. According to MPEP 2143.01 VI, "[i]f the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959)). In the instant case, the primary reference Herz uses the principle of passive monitoring to update customer profiles as described in col. 26, line 26 – col. 27, line 6. The Examiner's proposal to modify Herz with the prompting and updating methodology disclosed in Williams would change the basic principle of passive monitoring and updating under which Herz is constructed and was designed to operate. Accordingly, the teachings of the Herz and Williams references proposed by the Examiner are not sufficient to render claim 20 *prima facie* obvious.

For at least these reasons, reconsideration and withdrawal is respectfully requested. Dependent claims 21-27 depend ultimately from patentable base claim 20 and are likewise patentable. Reconsideration and withdrawal of this 35 USC 103 rejection is requested.

Independent claims 28 and 32 recite features and limitations analogous to those discussed above with respect to independent claim 20. Independent claim 28 recites in relevant part,

presenting the viewer with one of a first list of the selected programs and an alternative second list of programs, the first list arranged in accordance with the viewer characteristics information profile, and the second list arranged in accordance with an alternate viewer characteristics information profile, wherein the viewer characteristics information profile and the alternative characteristics information profile coexist

and the first list and the second list remain available to the viewer, wherein the second list is based on feedback input from the viewer of the first list resulting from a query.

Independent Claim 32 recites in relevant part,

receiving feedback input from the viewer based on a query about the first list; and

presenting the viewer with a second list of selected programs based on said feedback input, wherein the second list arranged in accordance with an alternate viewer characteristics information profile, wherein the viewer characteristics information profile and the alternative characteristics information profile coexist and the first list and the second list remain available to the viewer after receiving the feedback input from the viewer based on the query.

Accordingly, for reasons analogous to those discussed herein above, a prima facie case of obviousness has not been met with regard to the rejection of claims 28 and 32 under 35 USC 103 in view of Herz, Ellis and Williams. Dependent claims 29-31 depend ultimately from patentable base claim 28 and are likewise patentable. Dependent claims 33-42 depend ultimately from patentable base claim 32 and are likewise patentable. Reconsideration and withdrawal of the present 35 USC 103 rejection is requested.

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In

addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

CONCLUSION

Having fully addressed the Examiner's rejections it is believed that, in view of the preceding amendments and remarks, this application is in condition for allowance. Accordingly, reconsideration and allowance are respectfully solicited. If, however, the Examiner is of the opinion that such action cannot be taken, the Examiner is invited to contact the Applicants' attorney at (609) 734-6809 so that a mutually convenient date and time for a telephonic interview may be scheduled.

Please charge the applicable fees associated with this Amendment to our Deposit Account No. 07-0832.

Respectfully submitted,
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